

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

NANCY JO JENNINGS, ADMINISTRATOR PENDENTE LITE OF THE ESTATE OF
BERTHA BLANCHE DON CARLOS, DECEASED,

Appellant

v.

RUSSELL E. ATKINSON.

Respondent

DOCKET NUMBER WD77496

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 16, 2014

Appeal From:

Circuit Court of Johnson County, MO
The Honorable Garrett R. Crouch, II, Judge

Appellate Judges:

Division Four
Alok Ahuja, C.J. Presiding, James Edward Welsh, J., and Tracey Mason-White, Sp.J.

Attorneys:

John Edmiston, Warrensburg, MO

Counsel for Appellant

Attorneys:

Charles Fitzgerald, Warrensburg, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**NANCY JO JENNINGS, ADMINISTRATOR PENDENTE LITE OF THE ESTATE
OF BERTHA BLANCHE DON CARLOS, DECEASED, Appellant, v.
RUSSELL E. ATKINSON, Respondent**

WD77496

Johnson County

Before Division Four Judges: Ahuja, C.J. Presiding, Welsh, J., and Mason-White, Sp.J.

In 1993, Franklin Don Carlos and Bertha Don Carlos, as husband and wife, executed a beneficiary deed that would convey their property in Johnson County to Russell Ray Atkinson upon the death of the surviving grantor. In 1994, Franklin and Bertha, as husband and wife, executed and recorded a warranty deed conveying that same property individually to Bertha. Following Bertha's death in 2009, Nancy Jo Jennings was appointed as administrator *pendente lite* of Bertha's probate estate. Jennings filed a "Petition for Discovery of Assets" asking the court to enter judgment directing the surrender of the Johnson County property as an asset of Bertha's Estate. Atkinson asserted that he was the rightful owner of the property based upon the 1993 beneficiary deed. Following a bench trial, the circuit court entered judgment in favor of Atkinson. Jennings appeals.

Reversed and remanded.

Division Four holds:

The circuit court erred in concluding that the 1994 warranty deed did not revoke the earlier beneficiary deed. Under section 461.033.6, RSMo, a conveyance during the owners' lifetime of the owners' interest in property terminates the beneficiary designation with respect to the property transferred. Here, Franklin and Bertha, as husband and wife, conveyed their interest in the property via warranty deed *after* executing and recording the beneficiary deed. The judgment is reversed and the cause is remanded for further proceedings.

Opinion by James Edward Welsh, Judge

December 16, 2014

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